

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
LAUNIUPOKO WATER COMPANY, LLC)
To Convert from a Hawaii Limited)
Liability Company to a Hawaii)
Corporation.)
_____)

DOCKET NO. 2007-0398

DECISION AND ORDER NO. 23993

Filed Jan. 30, 2008
At 11 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
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STATE OF HAWAII

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KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Gleason P. Luasope

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DECISION AND ORDER

By this Decision and Order, the commission grants LAUNIUPOKO WATER COMPANY, LLC's ("LWC") request for approval to convert from a Hawaii limited liability company to a Hawaii "C" corporation, subject to certain regulatory requirements.

I.

Background

LWC is a member-managed Hawaii limited liability company, whose members are Peter K. Martin (52% ownership stake), Maui Land Ventures LLC (25% ownership stake), James C. Riley (21% ownership stake), and Glen Tremble (2% ownership stake) (collectively, the "Members"). On July 30, 2002, LWC filed an application requesting a certificate of public convenience and necessity ("CPCN") to operate a potable water utility system to serve certain existing and future developments in West Maui, in the State of Hawaii ("State"). By Decision and Order No. 20274, filed on June 27, 2003, in Docket No. 02-0196, the commission

granted LWC's request for a CPCN.¹ LWC's proposed initial rates, and rules and regulations for service were approved by the commission in Decision and Order No. 20341, filed on July 18, 2003, in Docket No. 02-0196.² LWC's current rates, rules and regulations for service were approved by the commission in Decision and Order No. 23539, filed on July 12, 2007, in Docket No. 2006-0505.³

A.

LWC's Request

On December 3, 2007, LWC filed an application seeking commission approval of its conversion from a Hawaii limited liability company to a Hawaii "C" corporation ("Application").⁴ In its Application, LWC asserts that on September 14, 2007, its Members consented to adopt a Plan and Articles of Conversion that would convert LWC from a Hawaii limited liability company to a

¹See In re Launiupoko Water Company, LLC, Docket No. 02-0196, Decision and Order No. 20274, filed on June 27, 2003.

²See In re Launiupoko Water Company, LLC, Docket No. 02-0196, Decision and Order No. 20341, filed on July 18, 2003.

³See In re Launiupoko Water Company, LLC, Docket No. 2006-0505, Decision and Order No. 23539, filed on July 12, 2007.

⁴LWC served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this proceeding pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules § 6-61-62. LWC and the Consumer Advocate are the sole parties to this proceeding.

Hawaii "C" corporation ("Proposed Change"), a copy of which LWC attached to its Application as "Exhibit A."

LWC represents that it is seeking the Proposed Change to utilize Internal Revenue Code ("IRC") Section 118 ("IRC § 118") which permits corporations to exclude contributions in aid of construction from gross income for tax purposes. LWC contends that the Internal Revenue Service ("IRS") has "ruled" that IRC § 118 is only applicable to corporations and not to limited liability companies. In support, LWC attached as "Exhibit B" to its Application IRS Industry Director Directive No. 1, which states that IRC § 118 is only applicable to corporations. Under the Proposed Change, LWC would be known as Launiupoko Water Company, Inc. (the "Utility") and its Members will become the Utility's shareholders. LWC asserts that its Members' percentage shares in the Utility will be the same as their respective ownership interest in LWC.

Moreover, LWC contends that the Utility would adopt all of LWC's rules, regulations, and rates and asserts that "there would be no change in the operation of the water utility."⁵ LWC further represents that the "financial fitness, willingness, and ability of the water utility would remain the same"⁶ under the Utility, and claims that the only change would be that LWC would be a Hawaii "C" corporation rather than a Hawaii limited liability company.

⁵See Application at 2.

⁶Id.

B.

Consumer Advocate's Position

On December 12, 2007, the Consumer Advocate filed its Statement of Position stating that it does not object to commission approval of the Proposed Change ("CA's SOP"). The Consumer Advocate's position is based on various factors. First, the Consumer Advocate maintains that the Proposed Change would not result in a change of ownership since LWC's Members would become the Utility's shareholders upon the Proposed Change. On this point, the Consumer Advocate asserts that "[f]rom a legal perspective, the change in the **form** of ownership of LWC (i.e., from general ownership to stock ownership) is consistent with the . . . conversion from a Hawaii limited liability company to a Hawaii "C" corporation.⁷ Second, the Consumer Advocate recognizes that the rules, regulations, and rates for water service would not be affected as a result of the Proposed Change since the Utility will be adopting all of LWC's rules, regulations, and rates currently administered by LWC and previously approved by the commission.

Third, the Consumer Advocate asserts that the Proposed Change could be beneficial to the Utility and its customers since the conversion would permit it to utilize the gross income exclusion provision set forth in IRC § 118. On this matter, the Consumer Advocate's view is that "[d]epending on how significant the . . . contributions in aid of construction

⁷See CA's SOP at 5 (emphasis in original).

are in any given year, the tax benefits arising out of the application of IRC § 118 could be important to the . . . [Utility] and ultimately its ratepayers."⁸ Lastly, the Consumer Advocate states, from a customer point of view, nothing about LWC would be different aside from it being a Hawaii "C" corporation as opposed to a Hawaii limited liability company.

Nonetheless, the Consumer Advocate recommends that: (1) LWC re-file its tariff reflecting the name change from Launiupoko Water Company, LLC to Launiupoko Water Company, Inc.; and (2) as a courtesy and to avoid any confusion, LWC "may want" to inform its customers of its conversion from a limited liability company to a Hawaii "C" corporation (collectively, "Tariff and Notice Recommendations").

II.

Discussion

State law confers the supervision and regulation of "all public utilities" and the administration of HRS chapter 269 on the commission.⁹ In particular, under HRS § 269-7, the commission is vested with broad powers to review and examine the condition and the manner in which a public utility is operated. HRS § 269-7(a) states, in relevant part:

The public utilities commission . . . shall have power to examine into the condition of each public utility, the manner in which it is operated with reference . . . the issuance by it of stocks and

⁸Id.

⁹See HRS § 269-6.

bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

HRS § 269-7(a).

Upon review, the commission finds the Proposed Change described in LWC's Application to be reasonable and in the public interest. The Proposed Change should not adversely affect LWC's customers since the Utility will be adopting all of the previously approved rules, regulations, and rates for water service in LWC's service area.¹⁰ Additionally, as the Consumer Advocate stated, the Proposed Change would not result in a change in ownership since upon effectuation of the conversion LWC's Members would become the Utility's shareholders. Furthermore, upon the Proposed Change, it appears that the Utility would be able to utilize the IRC § 118 gross income exclusion provision. The application of this provision would assist the Utility in maintaining its financial viability,¹¹ which ultimately is in the best interest of its customers and the public.

Moreover, the Consumer Advocate's Tariff and Notice Recommendations appear to be reasonable. The Proposed Change

¹⁰See Application at 2.

¹¹Id. at 3.

would result in a name change for the utility; thus, requiring LWC to re-file its tariff to reflect the change would be appropriate. LWC should also notify its customers of the change to forestall any confusion that may result due to the conversion. Accordingly, the commission finds it reasonable to adopt the Consumer Advocate's Tariff and Notice Recommendations.

Based on the foregoing, the commission concludes that LWC's request for commission approval of the Proposed Change should be granted. The commission also concludes that the Consumer Advocate's Tariff and Notice Recommendations should be adopted.

III.

Orders

THE COMMISSION ORDERS:

1. LWC's request for commission approval of its conversion from a Hawaii limited liability company to a Hawaii "C" corporation is granted.

2. Within 15 days of the date of this Decision and Order, LWC shall re-file its tariff reflecting the name change from Launiupoko Water Company, LLC to Launiupoko Water Company, Inc. and serve appropriate copies of the same on the Consumer Advocate.


3. Within 30 days of the date of this Decision and Order, LWC shall provide notice of the conversion to its ratepayers and provide documentation of such notice to the commission and the Consumer Advocate.

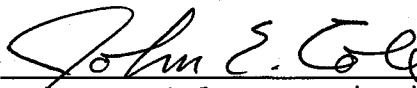
4. Failure to comply with the requirements noted above, may constitute cause to void this Decision and Order, and may result in further regulatory action as authorized by law.

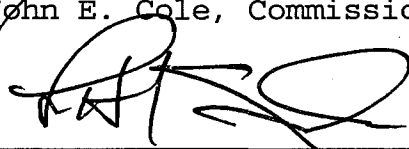
5. Upon compliance with Ordering Paragraphs 2 and 3, above, this docket shall be closed unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii JAN 30 2008.

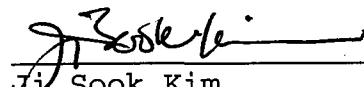
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2007-0398.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23993 upon the following Petitioners, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: JAN 30 2008